I agree with this contention on the authority of *Re Fischel & Mann*, (1919) 2 K.B. 431, at pp. 440 and 441, and *in re Palmer & Hosken*, (1896) 1 Q.B. 131—see pp. 136, 137; see also Russell on Arbitration, 11th edition p. 206.

I accordingly order that the award be set aside under section 12(2) of the Arbitration Ordinance and that the matter proceed to trial as an ordinary action.

Costs of this motion to abide the result of the action.

Order accordingly.

Solicitors for the plaintiff—*Hogan & Ivens.*

Solicitors for the First Defendant—

Presgrave & Matthews.

(Original Civil Jurisdiction)

Terrell, J.

February 10, 1933.

***RE* CHUA CHENG SUAN**

(Singapore Bankruptcy No. 54 of 1925)

Ordinance No.44 Section 113 (2)—Prosecution of offending Bankrupt.

A prosecution for offences against the Bankruptcy Ordinance will not be ordered under Section 113 (2) by a Judge if he is satisfied that the Official Assignee has properly exercised his judicial discretion in refusing the written consent required by Section 113 subsection (2).

An application was made by Motion by a creditor of the Bankrupt Chua Cheng Suan for an Order that the Bankrupt be prosecuted for an offence committed under Section 107(m) of Ordinance No. 44 (Bankruptcy). The Applicant alleged that the Bankrupt was adjudicated on the 6th March 1925 and that on the 9th July and 17th September 1929 the Bankrupt borrowed from the Applicant $660 on two promissory notes and had repaid him $52 to account of these two notes and that at the time the Bankrupt contracted these debts he did not disclose to the Applicant that he was an undischarged bankrupt.

The Applicant also produced evidence that he had applied to the Official Assignee for sanction to prosecute the Bankrupt for the offence punishable under Section 107(m) of Ordinance No. 44 (Bankruptcy) and that the Official Assignee had refused to give the written consent to sanction the prosecution required by S. 113 (2) of the Ordinance. Accordingly he applied to the Judge for an Order under Section 113 (2) above.

S. Fung for the Applicant submitted that he had produced prima facie evidence to show that an offence had been committed and that it was the duty of the Official Assignee to sanction the proceedings and that if he would not do so the Judge should make an Order directing prosecution.

Tudor (Assistant Official Assignee) did not oppose the application but drew the attention of the Court to the Official Assignee's reasons for not giving his written consent as required by that action. He stated that the Official Assignee had investigated the matter and as a result of such investigation had satisfied himself that there was no liklihood that the Bankrupt would be convicted of the alleged offence.

Terrell J. gave an oral judgment to the following effect:—

"It appears to me that all I am concerned to see is whether in refusing his written consent the Official Assignee is properly exercising the judicial discretion vested in him. If he has properly exercised such discretion I should decline to interfere with it In this case upon hearing the statements made by the Assistant Official Assigne I am of opinion that the Official Assignee has properly exercised his judicial discretion and therefore I refuse the motion".

Motion Dismissed.

Solicitor for the Applicant—*S. Fung.*

(Appellate Criminal Jurisdiction)

Deane, J.

August 22, 1927.

CHOP SUM THYE.....Appellants

vs.

REX.....Respondent

(Singapore Criminal Appeal No. 19 of 1927)

Pawnbroker—pawning of stolen property—conviction of thief and receiver—Magistrate's order—unconditional restitution—appeal—jurisdiction—"Criminal cause or matter"—Ordinance No. 61 (Pawnbrokers) S. 28 (1); Criminal Procedure Code, S. 295.

The Appellants, pawnbrokers, received in pawn certain diamonds which proved to be the very diamonds stated in a Police Circular to have been missing from a jeweller. The thief and receiver of the diamonds were arrested, tried and convicted of theft and dishonestly receiving stolen property respectively. After the conviction was recorded the prosecutor applied for the return of the diamonds. Counsel who watched those proceedings on behalf of appellants opposed the application. The Magistrate made an order for unconditional restitution. In an appeal against the order a preliminary objection was taken that there was no right of appeal from the order:—

Held, that there was a right of appeal under S. 295 of the Criminal Procedure Code.

The Queen vs. *The Justices of the Central Criminal Court*, 18 Q.B.D. 314 and *Leceister* v. *Cherryman*, (1907) 2 K.B. 101 considered.

Held, that the order of the Magistrate was within the jurisdiction of the Police Court and that the conviction was perfectly legal.

Held also, that the question of ownership of the diamonds could not be re-opened, the order being consequential upon the result of the trial of the thief and made upon the facts disclosed in the trial to which the appellants could not be a party.

Reg. v. *Goldsmith*, 12 Cox. C.C. 595 and *Rex.* v. *Macklin* 5 Cox. C.C. 216 applied.

APPEAL from an order made by Mudie, D. J. for the unconditional restitution to the owner of the diamonds stolen from him.